



W.P.(MD) No.21286 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD) No.21286 of 2023

and

W.M.P.(MD)No.17693 of 2023

M.Lakshmi

: Petitioner

-vs-

1.The II Class Executive Magistrate cum Tahsildar,
Kadaladi,
Ramanathapuram District.

2.The Executive Officer,
Sayalkudi Town Panchayat,
Ramanathapuram District.

3.R.Muniasamy

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the order passed by the first respondent in Na.Ka.No.B3/617/2018, dated 01.08.2023 and quash the same and consequently, direct the respondents 1 and 2 not to disturb the petitioner's possession and enjoyment of shops (five in numbers) being located in S.No. 185/4, in an extent of 0.17.5 ares, Arulmigu Karuppan Temple, Sayalkudi Group/Sub Division, Kadaladi Taluk, Ramanathapuram District.

For Petitioner

: Mr.R.Anand



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For Respondents : Mr.S.P.Maharajan
Special Government Pleader for R1

Mr.D.Sachikumar
Additional Government Pleader for R2

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to quash the order impugned in Na.Ka.No.B3/617/2018, dated 01.08.2023 passed by the first respondent and to direct the respondents 1 and 2 not to disturb the petitioner's possession and enjoyment of shops located in S.No.185/4, in an extent of 0.17.5 ares in Arulmigu Karuppan Temple, Sayalkudi Group/Sub Division, Kadaladi Taluk, Ramanathapuram District.

2. The petitioner states that she is the absolute owner of the property which is the subject matter of proceedings which is under challenge before this Court. It is the case of the petitioner that an extent of 17.5 ares in S.No.185/4 in Sayalkudi Group/Sub Division, Kadaladi Taluk, Ramanathapuram District is the property of the petitioner. It is the further case of the petitioner that her husband earlier took the property as a tenant and subsequently through a document by Samasthanam and that she is in



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possession for about 40 years. Quite contrary to that, the learned counsel appearing for the petitioner also relied upon a sale deed which was marked as Ex.B.22 in a suit filed in O.S.No.19 of 2004 by a third party as against the petitioner's husband and the petitioner. In Paragraph No.18 of the judgment in S.A.(MD)No.777 of 2010, it is seen that the petitioner and her husband who were defendants 1 and 2 in the suit filed by the appellant before this Court relied upon a document, namely, the sale deed dated 20.05.2002. It is seen that in the suit, the defence taken by the petitioner and her husband was that the property was purchased by the petitioner's husband under the sale deed from one Annasamy Pandian. It is seen that the said defence was not accepted by the Court as the petitioner or her husband had not produced any document to prove the title of the vendor of the petitioner's husband. The stand taken by the petitioner that the property was taken on lease from the temple is contrary to the title pleaded in the civil proceedings. Therefore, it would only be that the petitioner has no consistent case as to her title. It is admitted now before this Court that the dispute in relation to the temple is pending before the Civil Court as regards the character of the temple whether it is a private or public temple. That is not relevant to decide the title of the property. The other documents that are relied upon by the petitioner's counsel would only show that the dispute is in relation to the character of the temple. It has nothing to do with the property which is the subject matter of the impugned order.



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3. The petitioner has given several facts which would not lead us to believe the case of the petitioner that she is the owner of the property. From the “A” Register produced before this Court, it would only be seen that the property in S.No.185/4 is classified as “Cirkar Poramboke”. Even the temple, is shown only in the column 12 to mean that a temple is in encroachment of portion of the property in S.No.185/4. Therefore, the temple can never be considered as owner of the property even as per the revenue records marked by the petitioner before this Court. Without a semblance of title, on the strength of possession as lessee or as a purchaser, the petitioner has come forward with this writ petition, challenging the order of Tahsildar, who has conducted an enquiry and prepared a report pursuant to the direction of this Court earlier in a writ petition filed by one R.Muniyasamy in W.P.(MD)No.4076 of 2023 for removal of encroachment. While disposing of the same by order dated 28.02.2023, the Hon'ble Division Bench of this Court, has directed the Tahsildar to consider the representation of the writ petitioner on merits and in accordance with law and to remove the encroachment if any found after enquiry. A further direction was also issued to the official respondents to give sufficient opportunity of personal hearing to all persons concerned including one Ayyamperumal. However, the direction for removal of encroachment is only in respect of S.No.185/4 measuring an extent of 14.5 ares.



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4. Pursuant to the direction of this Court in the writ petition filed by a third party for removal of encroachment, the Tahsildar has initiated proceedings and conducted an enquiry before taking action for removal of encroachment. During enquiry, it is admitted by the petitioner that a notice was issued to the petitioner and other encroachers in the Government property. After hearing the petitioner and others, the Tahsildar has observed that an extent of 17.5 ares in S.No.185/4 is a Government poramboke and that the petitioner and others have encroached by putting up shops in the property of Government. Therefore, a decision was taken by the impugned order for removal of encroachment probably in the manner and in accordance with further directions found in the earlier writ petition. Therefore, this Court finds no merit in this writ petition.

5. It is needless to say that the respondents will initiate action after following the procedure as contemplated under the Tamil Nadu Land Encroachment Act, 1905 before carrying out eviction. It is now reported that a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 has been issued to the petitioner. Though the learned counsel has no instructions on that, the learned Additional Government Pleader has produced a copy of the same. If that is so, the further action will be taken after holding enquiry considering the objections if any received from the



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petitioner.

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6. With the above observations, the Writ Petition stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

31.08.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1.The II Class Executive Magistrate cum Tahsildar,
Kadaladi,
Ramanathapuram District.

2.The Executive Officer,
Sayalkudi Town Panchayat,
Ramanathapuram District.



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